

REMARKS

Concerning the New Claims

Claims 22, 23, and 24 are new. Claim 22 is structured following claim 1, WITHOUT the alleged 'new matter' according to the Office Action of 6/16/2004. Claim 22 therefore finds support on the same basis as Claim 1, apart from the question of new matter.

Claim 23 depends from independent claim 22. Claim 23 is structured to follow claim 2. Claim 23 therefore finds support in the specification on the same basis as claim 2.

Claim 24 depends from independent claim 22. Claim 24 is structured to follow claim 6. Claim 24 therefore finds support in the specification on the same basis as claim 6.

Applicant discusses below under the heading "Prior Art Rejections" each reference applied by the office action of 6/16/2004 to claims 1-6, 8-14, and 18 - 21. Each and every reference is distinguished from claims on grounds independent from the alleged offending 'new matter' added by amendment to claim 1 by the response dated March 25, 2004. Therefore, claims 22 – 24, which do not contain the alleged offending 'new matter', are believed novel over the art of record.

Section 112, First Paragraph Rejection

Claims 1-6, 8-14 and 18-21 stand rejected pursuant to 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant submits that the disclosure of the present application conveys that the Applicant possessed the claimed invention.

The Examiner urges that the amendment to claim 1 adding the limitations "said mixtures being devoid of said organic polymers" is forbidden new matter. The Examiner rejects support for the recitation found at page 3, lines 11-21. The Office Action states:

The specification is silent on the present [sic, presence] of a polymer. This silent [sic silence] is not to be expanded to positively exclude polymers Office Action 6/16/04, p. 2.

The specification distinguishes prior art and identifies shortcomings of the prior art at pages 1-3. Deficiencies of incorporating additives to polymers include air dispersal of powder additives at the point of use, and heterogeneous incorporation of additives into polymers. The specification identifies the combination polymer and additives [a master batch] as being known. (p.2, lines 14-18) In contrast, the invention is described as forming granules of polymer additives at temperatures below the temperature of formation of master batches. (p. 3, lines 17-19)

The invention is exemplified at page 37. Polymers are not a component of the granule product formed. The skilled artisan would recognize that the absence of polymer is a sharp contrast to prior art and significant to the invention.

The Office Action of 6/16/04 would require literal support for the limitation of claim 1 concerning the absence of polymers in the composition be expressed *in haec verba*, or literally "in the same words". However, Applicant submits that the present specification supports the recitations of the claims under the correct statement of the law.

The standard adopted by the Court of Appeals for the Federal Circuit rejects literal correspondence between the specification and the claims. *Crown Operations International, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1376, 62 USPQ 2d 1917 (Fed. Cir., 2002). See also *Purdue Pharma L.P. v. Faulding, Inc.* 230 F.3d 1320, 1323, 15 USPQ 2d 1481, 1483 (Fed Cir., 2000). The appropriate standard for support necessary for subsequent claim amendments as found in

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Union Oil v. Atlantic Richfield, 208 F. 3d 989, 997, 43 USPQ 2d 1227, 1232 (Fed. Cir., 2000),
cert. den., 121 S. Ct. 1167 (2001), states

the written description requirement does not require the applicant 'to describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed,'.

Further, in *Fujikawa v. Wattanasin*, 93 F. 3d 1559, 1570, 39 USPQ 2d 1895, 1904 (Fed. Cir., 1996) the Court stated:

ipsis verbis disclosure is not necessary to satisfy the written description requirement of section 112. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question.

The specification demonstrates without doubt that the Applicant possessed the invention claimed. The example on page 37 demonstrates the preparation of additives for polymers in a granular form not containing a polymer. The specification at pages 2-3 teaches a way from granular way forms of additives containing polymers because of the necessity of a higher heat history for the granule.

The rejection under 35 U.S.C. §112, first paragraph, may not be maintained because it is unsupported by applicable law. Further, the specification meets the appropriate test because it conveys to the skilled artist that Applicant possessed the invention as claimed.

Applicant therefore requests withdrawal of the rejection of claims pursuant to 35 USC §112, first paragraph.

Prior Art Rejections

Applicant's claims 1-6, 8-14, and 18-21 stand rejected pursuant to 35 U.S.C. § 102(b) according to nine references.

1) U.S. Patent 5,455,288 at Example 1 is said to anticipate. Applicant again points out that the claimed invention excludes polymer as defined in the specification. Moreover, the reference discloses a ribbon blend of components (Col. 5, lines 54-55; Col. 6, lines 2-3) not extruded components according to the claims.

Accordingly, the '288 reference does not anticipate the pending claims. Applicant requests withdrawal of the rejection over the '288 reference.

2) U.S. Patent 5,173,116 at Example 2 is said to anticipate. Applicant again points out that the claimed invention relates to additives to organic polymers as defined in the specification. The '116 reference is directed to pigment suspension. (Col. 1, lines 5-6). The disclosed pigment suspension may optionally include resins. (Col. 2, lines 28-31). Applicant finds no disclosure of claimed stabilizers for organic polymers in Example 2, or elsewhere in the reference. Moreover, the Office Action does not point to the claimed stabilizers for organic polymers within the '116 reference.

Furthermore, the reference discloses three-roll mill mixing (Col. 3, lines 9-12) in contrast to granular form obtained by extrusion, as claimed.

The pending claims are, therefore, not anticipated by the '116 reference. Applicant requests withdrawal of the rejection over the '116 reference.

3) The Office Action declares U.S. Patent 5,888,254 anticipates claims 1-6, 8-14, and 18-21. The Office Action does not identify a particular part relied upon within the '254 reference. 37 CFR § 1.104(c)(2). The '254 reference is not related to polymers or additives for polymers. The '254 reference relates to vat dyes and the coloring of yarn. (Col. 6, lines 49-65). The examples disclose drying of a solid (Col. 5, lines 24-26) and comminution of the solid. (Col. 6, lines 21-23). Formation of the claimed granular by extrusion is not, so far as Applicant can determine, disclosed.

Accordingly, the pending claims are not anticipated by the '254 reference. Withdrawal of the rejection over the '254 reference is requested.

4) EP 0 514 784 A1 at Example 6 is urged by the Office Action to anticipate the pending claims. The Office Action dated 6/16/2004 takes no apparent notice of the Markush Group to which the claims were limited by the amended and response dated March 25, 2004. That response is incorporated here by reference.

The rejected claims are not anticipated by EP 0 514 784. The Applicant requests withdrawal of the rejection over the '784 reference.

5) U.S. Patent 4,604,100 is urged by the Office Action to anticipate at Examples 1-5 because the examples "teach granules that comprise polyethylene glycol (a known stabilizer) and an azo-type dye pigment." (Office Action 6,16,2004, P.3.)

Applicant notes that whether polyethylene glycol is, or is not, "a known stabilizer" is immaterial to the pending claims.

Applicant does include as a stabilizer "transesterification product of 2-[3'-t-butyl-5' - (2-methoxycarbonyl-ethyl)-2'-hydroxyphenyl]-2H-benzotriazole with polyethylene glycol 300" p. 12, lines 22-25. This stabilizer reaction product is not polyethylene glycol, but a reaction product of polyethylene glycol.

Applicant may give life and meaning to terms in the specification. *Autogiro of America v. United States*, 384 F.2d 391, 155 USPQ 697 (Ct. Cl., 1967). Applicant does not include polyethylene glycol among the listed stabilizers. See specification, p. 11, line 22-p. 17, line 25; p.20, lines 5-16.

The rejected claims are therefore not anticipated by the '100 reference. Applicant requests withdrawal of the rejection over the '100 reference.

6) U.S. Patent 5,017,195 is urged to anticipate the pending claims in Examples 1 and 6, 2 and 4. Examples 1 and 6 comprise an azo dye and sodium alginate. Applicant references the remarks above regarding the role of the specification supported by the *Autogiro* decision.

The specification does not include alginate as a stabilizer for organic polymers. See specification, p. 11, line 22-p. 17, line 25; p.20, lines 5-16.

Examples 2 and 4 of the '195 reference comprise an azo dye and polyvinyl alcohol. The specification does not include polyvinyl alcohol as a stabilizer for organic polymers. See specification, p. 11, line 22-p. 17, line 25; p.20, lines 5-16. The remarks above concerning the '100 reference related to polyethylene glycol apply equally to the instant rejection.

For the foregoing reasons, the '195 reference does not anticipate the pending claims. Withdrawal of the rejection over the '195 reference is requested.

7) U.S. Patent 4,999,138 is relied upon at Table 1 as anticipating the pending claims. The Office Action acknowledges the '138 reference concerns "high-density granular concentrated detergent compositions." Office Action 6/16/2004, p. 4. In contrast, the pending claims are to additives for organic polymers in granular form. The Office Action identifies no basis for application of the '138 reference to the instant claims. Applicant cannot fairly respond to the rejection because the reference was not applied to the pending claims. 37 CFR § 1.104(c)(2).

Applicant notes the presence of polyvinyl alcohol in the detergent compositions of Table 1. The remarks above related to polyvinyl alcohol concerning the '195 reference are incorporated as applicable to this '138 reference.

For the reasons stated, Applicant's claims are not fairly rejected over the '138 reference. Moreover, so far as Applicant can determine, no basis to reject pending claims over the '138 reference exists. Withdrawal of the rejection of claims over the '138 reference is requested.

8) U.S. Patent 4,729,796 is relied upon at Example 1 as anticipating the pending claims. Example 1 teaches formation of particulate from an aqueous medium. The pending claims call for extrusion of polymer additives. So far as Applicant can determine there is no teaching or suggestion in the '479 reference to formation of granular material by extrusion. So far as Applicant can determine, no basis to reject pending claims over the '796 reference exists. Withdrawal of the rejection claims over the '796 reference is requested.

9) U.S. Patent 5,437,688 is relied upon at all of its 22 examples as anticipating the pending claims.

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Examples 1-7, 10-19, and 21-22 disclose preparation of granulated dye-containing material by means of spray drying. Examples 8 and 9 disclose the preparation of granulated dye-containing compounds by combining water with dry fluidized components.

Example 20 discloses the preparation of granular dye-containing components by the methods of claims 1-19.

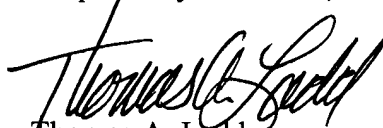
The Office Action has not identified preparation of granulated dye-containing components by means of extrusion in the '688 reference. So far as Applicant can determine, no disclosure of the preparation of granulated dye-containing material by means of extrusion is disclosed in the '688 reference. Accordingly, the pending claims are not anticipated by the '688 reference. Withdrawal of the rejection of claims over the '688 reference is requested.

Relief Requested

Claims 1 – 6, 8 – 14, and 18 – 21 are submitted to be fully supported by the specification as filed. New claims 22 – 24 are also submitted to be supported by the specification as filed. All pending claims are submitted as novel over the art of record for the reasons stated. No obviousness rejections pursuant to 35 USC §103 (a) has been made. The claims are believed to be in condition for allowance. Early and favorable action is solicited.

In the event that any questions remain or any further discussion is required, the Examiner is invited to call the undersigned at (317) 237-1066.

Respectfully submitted,



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